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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/644,174	08/20/2003	Susan Crawford Pope	65448 84753	5715

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LOCKE LIDDELL & SAPP LLP  
ATTN: SUE COTT  
2200 ROSS AVENUE  
SUITE 2200  
DALLAS, TX 75201-6776

EXAMINER

NGUYEN, SON T

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 01/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

17

<b>Office Action Summary</b>	<b>Application No.</b> 10/644,174	<b>Applicant(s)</b> POPE, SUSAN CRAWFORD	
	<b>Examiner</b> Son T. Nguyen	<b>Art Unit</b> 3643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 21 October 2004.  
 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.  
 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-16 and 18-22 is/are pending in the application.  
     4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
 6) ☒ Claim(s) \_\_\_\_\_ is/are rejected.  
 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
 10) ☒ The drawing(s) filed on 20 August 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☐ All    b) ☐ Some \* c) ☐ None of:  
         1. ☐ Certified copies of the priority documents have been received.  
         2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
         3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
     \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. **Claims 1-9,13-16,18-21** are rejected under 35 U.S.C. 103(a) as being unpatentable over Mohamed (US 5287Mohamed) in view of Fain (US 6192Fain).

For claims 1-3,6, Mohamed discloses an article useful for attracting canines and for inducing the canines to eliminate in a vicinity where the article is placed, the article comprising a polymeric body (col. 6, lines 1-8) with a canine attractant material that further comprises an active ingredient capable of inducing the canine to eliminate (throughout patent, esp. col. 5, line 68 and col. 6, lines 1-8). However, Mohamed is silent about the specific body with at least one surface or cavity and the article is a lawn stake with cap and stake portions, and the active ingredient being p-cresyl acetate and phenyl acetic acid.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ p-cresyl acetate and/or phenyl acetic acid as the preferred active ingredient in the article of Mohamed, depending on how potent one wishes the attractant material to be.

Fain teaches a lawn stake with a body 50 having a cavity 78, cap 60 and stake 54 portions, the body holds an attractant 76 in the cavity of the stake to attract desired

animals (col. 1, line 55, col. 3, lines 53-67). It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a stake article with a body with a cavity, cap and stake portions as taught by Fain as the preferred polymeric article of Mohamed in order to contain the attractant material and to allow the article to be inserted into the ground.

For claims 4 & 5, in addition to the above, Mohamed as modified by Fain (emphasis on Mohamed) teaches that the polymeric body, in this case, the stake, be coated or impregnated with the attractant material (col. 5, line 68 and col. 6, lines 1-8).

For claim 7, Mohamed as modified by Fain (emphasis on Fain) teaches a cover 60 over the cavity.

For claim 8, Mohamed as modified by Fain (emphasis on Fain) teaches the cover 60 being connected to the body by cap posts 74 instead of a hinge. It would have been an obvious substitution of functional equivalent to substitute the cap posts of Mohamed as modified by Fain (emphasis on Fain) with a hinge, since both types of connecting member would perform to allow the cover to be removable.

For claim 9, Mohamed as modified by Fain (emphasis on Fain) teaches the cavity is vented through the top opening of the body.

For claim 13, Mohamed as modified by Fain (emphasis on Mohamed) teaches the attractant material coating or impregnating the polymeric body (col. 5, line 68 and col. 6, lines 1-8), thus making the material a coating.

For claims 14-16, Mohamed as modified by Fain (emphasis on Fain) teaches the body being injection molded (col. 5, line 11) into one unit together forming the stake.

For claim 18, it would have been obvious to one having ordinary skill in the art at the time the invention was made to manufacture the article of Mohamed as modified by Fain out of thermoplastics, fiberglass or nylon, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious choice.

For claims 19-21, Mohamed as modified by Fain (emphasis on Fain) teaches the body is attachable to a support surface such as the ground or a window sill, which is the substantially flat surface, by using plate 77 with nail holes 79 (col. 5, lines 48-50).

3. **Claims 10-12** are rejected under 35 U.S.C. 103(a) as being unpatentable over Mohamed as modified by Fain as applied to claim 1 above, and further in view of Reichert (US 6531Reichert).

Reichert teaches an attractant material for training dogs, the material comprises solids which include active ingredient to entice the dogs. The solids are microspheres or microporous beads 12. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ solids in microspheres which include active ingredient to entice the dogs as taught by Reichert as the attractant material in the article of Mohamed as modified by Fain in order to provide easier handling since the attractant material is in solid form.

4. **Claim 22** is rejected under 35 U.S.C. 103(a) as being unpatentable over Mohamed as modified by Fain and Reichert. See the above explanation, for the limitation is the same as explained by Mohamed, Fain and Reichert.

***Response to Arguments***

5. Applicant's arguments filed 10/21/04 have been fully considered but they are not persuasive. The Declaration of Susan Crawford Pope has been acknowledged but is not found to be persuasive.

**Applicant's main argument is that none of the prior arts, especially Mohamed, teach p-cresyl acetate and phenyl acetic acid as the preferred active ingredient in the article for attracting canines.**

Mohamed teaches an article for attracting canines comprising a polymeric body (col. 6, lines 1-8) having an active ingredient that can be chosen from a list of chemical based on the desired choice of the user. Since Mohamed states that his invention can be molded or employed as some sort of polymeric body to attract a canine, Fain is relied upon for this polymeric body because Mohamed lists various body that can be used in col. 6, lines 1-8. Therefore, the combination of Mohamed as modified by Fain teaches the present invention except for the specific active ingredient of p-cresyl acetate and phenyl acetic acid.

As stated by Applicant, these ingredients are known to be used for flavoring or perfume, which are both considered to be attractants to animal. Therefore, to choose an ingredient that has already been invented would be obvious to one of ordinary skill in the art to make the article more potent because some ingredients may or may not be more potent than others. Conducting experimentation on already known and invented ingredients would be routine based on general testing procedure to find the best result for the composition desired. Applicant did not find anything new, regarding the property

or characteristic of p-cresyl acetate and phenyl acetic acid, thus, to pick an ingredient that is already known for its flavoring and perfumery characteristics would just merely be obvious to one of ordinary skill in the art based on routine testing and experimentation for a more potent composition.

It is to the Examiner's opinion that Applicant did not find unexpected result by employ p-cresyl acetate and phenyl acetic acid because when employing these two ingredients, they still have the same characteristics as when they are invented, and that is for attracting an animal by flavoring or perfumery. Nothing new has been found about these two ingredients, therefore, it cannot be unexpected result.

Argument against Reichert US 6531145) geared toward the same argument as above, therefore, see above.

### ***Conclusion***

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Art Unit: 3643

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Son T. Nguyen, whose telephone number is 703-305-0765. The examiner can normally be reached on Mon-Thu from 10:00am to 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 703-308-2574. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Son T. Nguyen  
Primary Examiner  
Art Unit 3643

stn